

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GREGORY YOUNG, ODETTA YOUNG,)	
EDWARD HUYER, CONNIE HUYER AND)	CASE No. 4:08-CV-507
SUE ANN ROSS, ON BEHALF OF THEMSELVES)	
AND ALL OTHERS SIMILARLY SITUATED,)	
)	DEFENDANTS' REQUEST FOR JUDICIAL
PLAINTIFFS,)	NOTICE IN SUPPORT OF THEIR MOTION
)	TO DISMISS CORRECTED FIRST AMENDED
V.)	COMPLAINT AND STRIKE ALLEGATIONS
)	OR, IN THE ALTERNATIVE, MOTION
WELLS FARGO & CO., AND)	FOR A MORE DEFINITE STATEMENT
WELLS FARGO BANK, N.A.)	
)	
DEFENDANTS.)	

COME NOW, Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A., ("Defendants" or "Wells Fargo"), by and through their undersigned attorneys, and for their Request for Judicial Notice in Support of Their Motion to Dismiss Corrected First Amended Complaint and Strike Allegations Or, in the Alternative, Motion for a More Definite Statement, state:

1. Defendants filed their Motion to Dismiss Corrected First Amended Complaint and Strike Allegations Or, in the Alternative, Motion for a More Definite Statement on April 6, 2009, contemporaneously with the filing of this request.

2. In connection with the submission and review of their motion to dismiss and to strike allegations, Defendants seek consideration of certain matters of record over which this Court can and should take judicial notice pursuant to Federal Rule of Evidence 201.

Additionally, the records and information the Court is requested to consider correctly may be included as part of the record supporting the motion to dismiss and to strike allegations because

they consist of or relate to documents and matters specifically asserted or referred to in Plaintiffs' Corrected First Amended Complaint.

3. Accordingly, the Court is asked to receive and consider the documents, records and information set forth in **Exhibits A - I**, as attached to this request and incorporated here by this reference. Those Exhibits consist of:

- a. **Exhibit A** – A true and correct copy of an adjustable rate note, dated August 26, 2005, evidencing a \$459,800.00 loan by Wells Fargo Bank, N.A. to Plaintiffs Gregory and Odetta Young.
- b. **Exhibit B** – A true and correct copy of an adjustable rate/balloon note, dated March 16, 2007, evidencing a \$260,000.00 loan by Wells Fargo Bank, N.A. to Plaintiff Edward Huyer.
- c. **Exhibit C** – A true and correct copy of a note, dated March 16, 2007, evidencing a \$48,750.00 second loan by SouthStar Funding, LLC to Plaintiff Edward Huyer.
- d. **Exhibit D** – A true and correct copy of a note, dated May 1, 2006, evidencing a \$356,000.00 loan by Wells Fargo Bank, N.A. to Plaintiff Sue Ann Ross.
- e. **Exhibit E** – A true and correct copy of a mortgage securing the \$459,800.00 loan to Plaintiffs Gregory and Odetta Young on property located at 8 Elmendorf Circle, New Jersey 08844 that was recorded with the County Clerk of Somerset County, New Jersey on September 13, 2005.
- f. **Exhibit F** – A true and correct copy of a first mortgage securing the \$260,000.00 loan to Plaintiff Edward Huyer on property located at 3340 Sawgrass Drive, Florence South Carolina 29505 that was recorded with the Clerk of Court in Florence County, South Carolina on March 21, 2007.

- g. **Exhibit G** – A true and correct copy of a second mortgage securing the \$48,750.00 second loan to Plaintiff Edward Huyer on property located at 3340 Sawgrass Drive, Florence South Carolina 29505 that was recorded with the Clerk of Court in Florence County, South Carolina on March 21, 2007.
 - h. **Exhibit H** – A true and correct copy of a deed of trust securing the \$356,000.00 loan to Plaintiff Sue Ann Ross on property located at 4312 Winje Drive, Antelope, California 95843 that was recorded with the County Recorder for Sacramento County, California on May 8, 2006.
 - i. **Exhibit I** – A true and correct copy of the First Amended Complaint filed by Plaintiff Sue Ann Ross on March 12, 2009 in *Ross v. Wells Fargo Bank, N.A., et al.*, 2:09-cv-319. That case was initiated by Ms. Ross in California State court and was then removed on February 4, 2009 to the United States District Court for the Eastern District of California. That action remains pending before that court.
4. The Court may consider these exhibits as they are matters of public record that are properly subject to judicial notice. *Noble Sys. Corp. v. Alorica Central, LLC*, 543 F.3d 978, 982 (8th Cir. 2008); *Levy v. Ohl*, 477 F.3d 988, 991 (8th Cir. 2007).
5. Further, these documents and/or their underlying transactions are referenced in Plaintiffs' Corrected First Amended Complaint Petition at paragraphs 42-66 and are central to determination of whether each of the Plaintiffs may maintain this lawsuit in a personal or representative capacity. Accordingly, those documents set forth in **Exhibits A - I** as attached may be considered as part of the pleadings for purposes of a motion to dismiss. *See Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000); *Venture Assoc. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993).

WHEREFORE, Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A., request that this Court receive **Exhibits A – I** as attached, take judicial notice of the same, and consider them as part of the record supporting Defendants’ pending Motion to Dismiss Corrected First Amended Complaint and Strike Allegations Or, in the Alternative, Motion for a More Definite Statement.

Dated: April 6, 2009.

FAEGRE & BENSON LLP

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WELLS FARGO BANK, N.A.

**Pro Hac Vice admissions are pending*

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing **Request for Judicial Notice in Support of Their Motion to Dismiss Corrected First Amended Complaint and Strike Allegations Or, in the Alternative, Motion for a More Definite Statement** was served upon the following parties through the Court's CM/ECF electronic filing system on the 6th day of April, 2009.

/s/ Irene Hickl

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Table of Contents – Exhibits A – I

- Exhibit A:** Gregory and Odetta Young adjustable rate note, dated August 26, 2005, evidencing a \$459,800.00 loan by Wells Fargo Bank, N.A.
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